



GREENSTEIN DELORME & LUCHS, P.C.

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September 24, 2012

**Via Electronic Mail**

Mr. Anthony J. Hood, Chairman  
D.C. Zoning Commission  
One Judiciary Square  
441 4th Street N.W.  
Second Floor  
Washington, D.C. 20001

RECEIVED  
D.C. OFFICE OF ZONING  
2012 SEP 24 PM 2:51

**Re: Z.C. Case No. 10-14 (Big Bear Cafe)  
Map Amendment for 1700 First Street, N.W. Square 3103, Lot 800  
Post-Hearing Submission**

Dear Chairman Hood and Members of the Commission:

The Zoning Commission ("Commission") held a public hearing on September 17, 2012 to consider an application from Stuart Davenport, owner of Big Bear Cafe ("Applicant"), for a Map Amendment for property located at 1700 First Street in Lot 800 of Square 3101 ("Property"). At the hearing the Commission requested a status report be submitted with regard to negotiations with the party in opposition, "The Lewis Group" represented by Karla M. Lewis.

Since the hearing the Applicant has both met and corresponded with Ms. Lewis to discuss issues raised by the party in opposition. The list of issues discussed, as well as agreed to mitigation, is attached. The Applicant has agreed to increase the trash and recycling collection for the Property and restrict the collection from occurring prior to 7am daily (see attached email correspondence and an executed agreement with Waste Management Services).

In addition, the Applicant has expressed his willingness, provided the Lewis Group withdraws its opposition to the requested Map Amendment and the Map Amendment is granted, to execute a Declaration of Covenants restricting the height of any building constructed on the Property to 40 feet for a period of twenty-five (25) years, subject to lender consent. The Applicant agrees to execute the Declaration within thirty (30) days of the expiration of the appeal period of a final order that approves the subject Map Amendment Application.

Should you have any questions, please have the Office of Zoning contact the undersigned.

Sincerely,

*Kate M. Olson*

Kate M. Olson

Enclosures

ZONING COMMISSION  
District of Columbia  
CASE NO. 10-14  
ZONING COMMISSION  
District of Columbia  
EXHIBIT NO. 50  
CASE NO. 10-14  
EXHIBIT NO. 50

**Z.C. Case No. 10-14 (Big Bear Cafe Map Amendment)**  
**September 24, 2012**  
**Page 2**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this letter and enclosures were sent on September 24 to the following:

Copies Provided To:

***Hard Copy and Electronic Copy:***

Office of ANC 5C  
Hugh Youngblood, ANC 5C03

Paul Goldstein, DC Office of Planning  
Jamie Henson, DC Dept. of Transportation

The Lewis Group, c/o Karla M. Lewis

*Kate M. Olson*

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Kate M. Olson, Esq.

## **Progress Report as of Sept 24, 2012**

**Applicant Addressing Issues Raised by The Lewis Group, party in opposition  
Zoning Case #10-14 Big Bear Cafe, Map Amendment**

### **Cleanliness**

- Applicant has signed a new trash service contract with Waste Management Services to increase the number of recycling pickups to 3x/week and trash pickups to 4x/week. Applicant will also get trash service through the weekend where our business is busiest.
- Applicant will have an agreement with the new trash company that no recycling/trash pickups will take place before 7am daily.
- In the process of getting building permits to enclose the back area with a fence. This will enable Applicant to clean-up the back yard and make all trash storage, equipment, crate storage, etc. enclosed and hidden from public view.
- Working with a local neighborhood garden business, Love and Carrots, on increasing garden maintenance to make sure the garden beds are constantly weeded, watered, and tended to.
- The Big Bear currently hires a local landscaper to clean all sidewalks and weed/maintain the treeboxes along the 100 block of R streets (north side), and the 1700 block of 1<sup>st</sup> Street (west side). Applicant will reach out to local neighbors and help to coordinate funding for continued maintenance and cleanup.

### **Parking**

- Continue to encourage pedestrian and bicycle use where possible.
- Continue to work with DDOT as Applicant has in the past to install new bike-racks when necessary to increase the availability of bicycle parking.
- Continue to work with DDOT as Applicant has done in the past to encourage the installation of bike racks as a part of the Capital Bike Share Program.
- Continue to hold public events that encourage the use of bicycles and public transit such as the Railvolution Luncheon on public transit, the Phoenix Bike bi-annual used bike sale, community meetings for the Rails to Trails organization, the Metropolitan Coffee Bike Crawl, etc.

### **Show respect and give attention to local residents**

- Continue to reach out to all neighbors within 200 feet of the property to ensure they are informed of the zoning process.
- Prepared petitions in support of the project from residents along the unit block and 100 block of R street, and the 1600 block and 1700 block of 1<sup>st</sup> Street within this 200 foot radius, that are being submitted to the Zoning Commission.

### **Future use**

- Future uses of the property with regard to uses involving alcohol consumption will be regulated by the ABRA and DDOT/Public Space. This includes licensing and permits that will restrict hours of operation and use type (such as restaurant, market, tavern, etc.).

### **Precedent**

- The issue of setting a precedent where other local residential properties may be converted to commercial properties is addressed with the Comprehensive Plan.

### **Safety**

- Maintaining extended hours beyond 6pm, and maintaining the presence of “eyes on the street” due to our outdoor seating and presence of customers later in the evening, the presence of the Business at the Property itself will continue to make a positive effect on the atmosphere contributing to public safety.
- Continue to work with neighbors and local police to address public safety issues and local crime.

### **Tax concerns, Property Values**

- Help promote the DC Homestead Deduction program in our area to help residents be aware of the protections created for them by the DC government.



Stuart Davenport &lt;studavenport@gmail.com&gt;

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**Waste Management Service Contract**

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Newman, Tara &lt;tnewman@wm.com&gt;

Fri, Sep 21, 2012 at 10:01 AM

To: Stuart Davenport &lt;studavenport@gmail.com&gt;

Mr. Davenport,

Per our conversation and newly signed contract between the Big Bear Cafe and Waste Management Services, we will begin our new service Monday, 9/24/2012. This will include trash pickup services 4 days per week, and recycling pickup 3 days per week as described in the signed contract.

In addition, we will set your service to have pickups no earlier than 7am since I have been notified that the Big Bear Cafe is located adjacent to a residential neighborhood.

Thank you for choosing Waste Management and have a great day!

Sincerely,

Tara Newman  
Inside Commercial Representative  
Tel: 800-345-7932  
Fax: 877-475-6241  
[tnewman@wm.com](mailto:tnewman@wm.com)

Waste Management  
6994 Columbia Gateway Dr. Ste. 200  
Columbia, MD 21046  
[Facebook](#) | [Twitter](#)

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**Waste Management recycles enough paper every year to save 41 million trees. Please recycle any printed emails.**



Gaithersburg Hauling  
8101 Beechcraft Avenue  
Gaithersburg, MD 20879-1547  
800-969-2069

**Commercial Service Agreement**  
**Non-Hazardous Waste**

WM Agreement # **S0002707514**  
Customer Acct #  
Acct. Name **Big Bear Cafe**  
SIC **5812**  
Salesperson **Tara Newman**

### Billing Information

Name	<b>Big Bear Cafe</b>	Contact	<b>Stuart Davenport</b>	Bill to Acct	
Address	<b>1700 1ST ST NW</b>	Telephone #	<b>(202) 549-6996</b>	Purchase Order #	
City/State/Zip	<b>WASHINGTON, DC 20001</b>	Fax #		Effective Date	<b>9/24/2012</b>
County/Parish	<b>DISTRICT OF COLUMBIA</b>	Email	<b>studavenport@gmail.com</b>	Last API Date	

### Equipment and Service Summary - Commercial

	Quantity	Equipment	Waste Type	Frequency	Pickup day	Service Charges
1	1.0	2 Yard FEL	MSW Commercial	4x Per Week	M - W - F - S	\$ 383.83
2	1.0	2 Yard FEL Recycling		3x Per Week	M - W - F	\$ 86.95

### Agreement Fees

#### Recurring

Admin Fee \$ 4.00

#### Conditional

Delivery Charge \$ 150.00 (per container)  
Container Exchange Fee \$ 150.00  
Customer Service Assisted \$ 8.00  
Payment Charge

**This is not a bill**

A fuel surcharge and environmental cost recovery charge, calculated as a percentage of the Charge(s), will be included on your invoice. Information about the Fuel/ Environmental Charge can be found on our website at [www.wm.com](http://www.wm.com) under billing inquiry. State and Local taxes, if applicable, will also be added to the Charges.

If applicable to your account an Recycle Material Offset fee (RMR) may vary from month to month based on the recyclable material commodity market conditions, and will appear on your invoice. Customer's Waste Materials does not exceed an average weight of ( lbs/yard).

The individual signing this agreement on behalf of customer acknowledges that he/she has read and accepts the terms and conditions of this agreement which accompany this service summary sheet and that he/she has the authority to sign on behalf of the customer.

**Contract Term is for 1 year(s) from the Effective Date ('Initial Term') and it shall automatically renew thereafter for additional terms of 12 months ('Renewal Term') unless terminated as set forth herein.**

Customer  
Signature

Printed  
Name

**Stuart Davenport, Owner BBC**

Date

**9/21/2012**

Company  
Signature

Printed  
Name

Date



Gaithersburg Hauling  
8101 Beechcraft Avenue  
Gaithersburg, MD, 20879-1547  
800-969-2069

**Commercial Service Agreement**  
**Non-Hazardous Waste**

WM Agreement # S0002707514  
Customer Acct #  
Acct. Name Big Bear Cafe  
SIC 5812  
Salesperson Tara Newman

**Service Information**

Name **Big Bear Cafe**  
Address **1700 1ST ST NW**  
City State Zip **WASHINGTON, DC 20001**  
County/Parish **DISTRICT OF COLUMBIA**

**Service Details**

Contact **Stuart Davenport**  
Telephone # **(202) 549-6996**  
Fax #  
Email **studavenport@gmail.com**  
Customer Comments

**Equipment and Service Details - Commercial**

Quantity	Equipment	Waste Type	Frequency	Pickup day	Attributes
1	2 Yard FEL	MSW Commercial	4x Per Week	M - W - F - S	WM Owns: 1, Delivery: 1, Lids,

**Recurring Charges**

**Service Fees**

Container Service Fee \$ 7.75/Month  
Service Charge \$ 376.08  
**Total \$ 383.83**

**Conditional Charges**

Extra Pickup Fee \$ 125.00 /Lift

Quantity	Equipment	Waste Type	Frequency	Pickup day	Attributes
2	2 Yard FEL Recycling		3x Per Week	M - W - F	WM Owns: 1, Delivery: 1, Lids,

**Conditional Charges**

Service Charge \$ 86.95

Extra Pickup Fee \$ 125.00 /Lift



## Commercial Service Agreement Terms and Conditions

1. **SERVICES RENDERED; WASTE MATERIALS.** Customer grants to Company the exclusive right, and Company shall furnish equipment and services, to collect and dispose of and/or recycle all of Customer's Waste Materials. Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous solid waste and Recyclable Materials generated by Customer or at Customer's Service Address. Waste Materials includes Special Waste, such as industrial process wastes, asbestos-containing material, petroleum contaminated soils, treated/de-characterized wastes, and demolition debris, but Customer shall complete a Waste Profile for such Special Waste which has been approved by Company in writing. Recyclable Materials shall include any type of material that can be recycled or recovered whether separated or not separated from other Waste Materials prior to collection. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any waste trees, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or Special Waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Material shall remain with Customer at all times. Title to Waste Materials provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or applicable law.

2. **TERM.** The term ("Term") of this Agreement is set forth on the service summary sheet of this Agreement. The "Initial Term" shall be the initial period after the Effective Date set forth on the service summary sheet of this Agreement ("Initial Term"). Unless otherwise specified on the service summary sheet, the Term shall automatically renew for the period set forth on the service summary sheet of this Agreement ("Renewal Term") unless either party gives to the other party written notice (See Section 10(e)) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.

3. **SERVICES GUARANTY; CUSTOMER TERMINATION.** If the Company fails to perform the services described within five business days of its receipt of a written demand from Customer (See Section 10(e)), Customer may terminate this Agreement with the payment of all monies due through the termination date. If Company increases the Charges payable by Customer hereunder for reasons other than as set forth in Section 4 below, Customer shall have the right to terminate this Agreement by written notice to the Company no later than thirty (30) days after Company notifies Customer of such increase in Charges in writing. If Customer so notifies Company of its termination of this Agreement, such termination shall be of no force and effect if Company withdraws or removes such increase within fifteen (15) days after Customer provides timely notification of termination. Absent such termination, the increased Charges shall be binding and enforceable against Customer under this Agreement for the remaining Term.

4. **CHARGES, PAYMENTS, ADJUSTMENTS.** Upon receipt of an invoice, Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the Charges on the first page, as it may be adjusted over the term of this Agreement as noted herein (the "Charges"). Company reserves the right to increase the Charges payable by Customer during the Term: (a) for any changes or modifications to, or differences between, the actual equipment and services provided by Company to Customer and the agreed upon Equipment/Service specifications on the first page; (b) any change in the composition of the Waste Materials or if the average weight per yard of Customer's Waste Materials exceeds the amount specified on the first page; (c) for any increase in or other modification to its fuel or environmental cost recovery charges; (d) to cover any increases in disposal and/or third party transportation costs; (e) to cover increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges or acts of God such as floods, fires, hurricanes and natural disasters; and (f) no more often than annually from the Effective Date (or if specified on the first page, Customer's Last API Date) for increases in the Consumer Price Index plus four percent of the then current Charges. Any increase in Charges enumerated in clauses (a) through (e) above may include an amount for Company's operating or gross profit margin. Company also reserves the right to charge Customer additional fees if the following additional services are provided to Customer: Administrative Fee, Enclosure Charge, Services on High Demand Days, Pull/Push Out Services, Container Relocation Fee, or Seasonal Restart Fee. In the event Company adjusts the Charges as provided in this Section 4, Customer and Company agree that this Agreement as so adjusted will continue in full force and effect for the remaining Term.

Any Customer invoice balance not paid within thirty (30) days of the date of invoice is subject to a late fee, and any Customer check returned for insufficient funds is subject to a NSF fee, both to the maximum extent allowed by applicable law. In the event that payment is not made when due, Company retains the right to suspend service until the past due balance is paid in full. In the event that service is suspended in excess of fifteen (15) days, Company may terminate this Agreement for such default and recover any equipment

5. **CHANGES.** Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment, may be agreed to orally, in writing, by payment of the invoice or by the actions and practices of the parties. If Customer changes its Service Address during the Term, this Agreement shall remain valid and enforceable with respect to services rendered at Customer's new service location if such location is within Company's service area.

6. **EQUIPMENT, ACCESS.** All equipment furnished by Company shall remain the property of Company; however, Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unobstructed access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modifications caused by or resulting from Customer's failure to provide access. Customer warrants that Customer's property is sufficient to bear the weight of Company's equipment and vehicles and that Company shall not be responsible for any damage to the Customer's property resulting from the provision of services.

7. **LIQUIDATED DAMAGES.** In the event Customer terminates this Agreement prior to the expiration of the Term for any reason other than as set forth in Section 3, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages in addition to the Company's legal fees: (a) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly Charges multiplied by six; (b) if the remaining Initial Term under this Agreement is less than six months, Customer shall pay its most recent monthly Charges multiplied by the number of months remaining in the Term; (c) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly Charges multiplied by three; or (d) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly Charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Customer shall pay liquidated damages of \$100 for every Customer waste tire that is found at the disposal facility.

8. **INDEMNITY.** The Company agrees to indemnify, defend and save Customer harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs (a) during the collection or transportation of Customer's Waste Materials, or (b) as a result of the disposal of Customer's Waste Materials in a facility owned by the Company or a subsidiary of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials. Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

9. **RIGHT OF FIRST REFUSAL.** Customer grants to Company a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

10. **MISCELLANEOUS.** (a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events or significant threats of events beyond its reasonable control, whether or not foreseeable, including, but not limited to, strikes, labor trouble, riots, imposition of laws or governmental orders, fires, acts of war or terrorism, acts of God, and the inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events. (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns. (c) This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, whether written or oral, that may exist between the parties. (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided. (e) All written notification to Company required by this Agreement shall be by Certified Mail, Return Receipt Requested. (f) Any blanks or unfilled or unmarked boxes or spaces on this first page shall be deemed to be inapplicable and not affect the validity of this Agreement. (g) If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision. (h) In the event the Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay the Company's attorneys' fees and court costs.